

Application No. 09/805,539
Amendment dated August 8, 2003
Responsive to Office Action dated May 28, 2003

REMARKS

Claims 5-7, 9, 11, and 13 remain in this application. Claims 1-4, 8, 10, and 12 have been canceled. No claims have been withdrawn.

Claims 5, 11, and 13 have been amended to remove the redundancy of "planar" and "two" and improve clarity of the claims.

35 U.S.C. §112, first paragraph

Claims 5, 11, and 13 recite limitations with insufficient antecedent basis in the claims. Applicant appreciates the Examiner's full and detailed consideration of the claims. Applicant acknowledges the rejection without traverse. Sufficient antecedent basis for the limitation in the claims have been added to claims 5, 11, and 13 with said blanket having a half portion of said blanket adjacent to said top edge of said blanket.

35 U.S.C. §103

Claims 5 and 9 are rejected under 35 USC §103(a) as being unpatentable over U.S. Patent 3,919,721 to Earhart in view of U.S. Patent 5,245,717 to Rudy. In reference to claim 5, the Examiner states that Earhart discloses all the Applicant's claim limitations except for a pair of sleeves, and that Rudy "discloses a blanket having a pair of sleeves 120 inherently having oblong apertures 111 defined at a shoulder end." Applicant respectfully traverses.

Earhart '721, Rudy '717, Wilkes '825, and Aikins '847, considered individually or together in combination, fail to suggest or teach the claim 5 limitation that each of the sleeve apertures has "a foot pocket having "said bottom edge of said pocket panel

Application No. 09/805,539
Amendment dated August 8, 2003
Responsive to Office Action dated May 28, 2003

coinciding with ... the bottom edge of said blanket for warming feet and for converting the blanket into a pillow."

In reference to claim 5, the Examiner states that Earhart discloses all the Applicant's claim limitations except for a pair of sleeves, and that Rudy "discloses a blanket having a pair of sleeves 120 inherently having oblong apertures 111 defined at a shoulder end." Applicant respectfully traverses. Earhart '721, Rudy '717, Wilkes '825 and Aikins '847, considered individually or together in combination, fail to suggest or teach the claim 5 limitation requiring each of the sleeve apertures to have "an oblong shape for facilitating improved freedom of arm movement within said sleeve."

Rudy does not disclose sleeves 120 inherently having oblong apertures 111, but instead explicitly teaches circular apertures 111 as shown in Figure 2 of Rudy '717. Applicant concedes that Rudy states that the "openings may be in a suitable size (emphasis added) but are desirably large, about double the size of the sleeve openings" ... Rudy, U.S. Patent 5,245,717, col. 2, lines 40-43. However, Rudy does not disclose or teach, explicitly or inherently, an oblong shape for a sleeve aperture. Rudy explicitly teaches away a different shape, namely a symmetrical, circular shape for a sleeve aperture.

Reference lacks the inherent feature recited by the claim limitation.

Regarding the alleged obviousness by the Rudy patent, on its face the Rudy patent does not disclose or discuss the claim 5 limitation of a pair of sleeve apertures 40, 50, each having an oblong shape for facilitating and improving freedom of arm movement within the sleeve. The Examiner maintains that this application merely

Application No. 09/805,539
Amendment dated August 8, 2003
Responsive to Office Action dated May 28, 2003

claims a preexisting property inherent in the structure disclosed in the prior art. The Examiner urges us to accept the proposition that if a prior art reference discloses the same structure as claimed by a patent, a sleeve aperture, the resulting property, in this case a sleeve aperture having an oblong shape, should be assumed. We respectfully disagree with this approach because this proposition is not in accordance with the Court of Appeals of Federal Circuit cases about inherency. If the oblong shape limitation is inherently disclosed by the Rudy patent, it must be necessarily present and a person of ordinary skill in the art would recognize its presence. In re Robertson 169 F.3d 743, 745, 49 U.S.P.Q. 2d 1949, 1950-51 (Fed. Circ. 1999); Continental Can, 948 F.2d at 1268, 20 U.S.P.Q. at 1749. Inherency "may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." Id at 1269, 20 U.S.P.Q. 2d at 1749 (In re Oelrich, 666(f) 2d 578, 581, 212 U.S.P.Q. 323, 326 (CCPA 1981)). By arguing inherent disclosure of the oblong shape of the sleeve aperture in the Rudy patent, the Examiner bears an evidentiary burden to establish that the limitation was necessarily present. It is respectfully submitted that the Examiner has failed to meet its burden because sufficient evidence that the limitation was necessarily present has not been presented.

Examiner has not demonstrated a suggestion to combine the Earhart patent with the Rudy patent and thus, cannot rely upon such a combination to show obviousness.

Claim 9 depends from claim 5 and is patentably distinct over the cited references for the same reason discussed above regarding claim 5.

Claims 6 and 7 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 3,919,721 to Earhart in view of U.S. Patent 5,245,717 to Rudy, and

Application No. 09/805,539
Amendment dated August 8, 2003
Responsive to Office Action dated May 28, 2003

further in view of U.S. Patent 777,825 to Wilkes. Applicant respectfully traverses.

Both claims 6 and 7 depend from claim 5. The omitted claim limitations pointed out and discussed with respect to claim 5 above apply here also with respect to claims 6 and 7.

Earhart '721, Rudy '717, and Wilkes '825, considered individually or together in combination, fail to suggest or teach the claim 5 limitation of a sleeve aperture which has "an oblong shape for facilitating improved freedom of arm movement within said sleeve." Nor do the above-cited references show the limitation of a pocket panel coinciding with the bottom edge of said blanket.

Claim 11 is rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 3,919,721 to Earhart in view of U.S. Patent 5,245,717 to Rudy, in view of U.S. Patent 777,825 to Wilkes, and further in view of U.S. Patent 6,219,847 to Aikins. Applicant respectfully traverses. The above cited references, considered individually or together in combination, fail to suggest or teach the same claim 11 limitations as are found in the claim 5 limitations of "sleeve apertures having an oblong shape" and the limitation of a "foot pocket having a pocket panel coinciding with the bottom edge of the blanket." The same reasons for patentability of claim 5 apply here to claim 11.

Moreover, Applicant concedes that Aikins discloses a cuff, but not an expandable cuff 17 for accommodating a variety of sleeve lengths and cuff widths.

The significance of the patentable differences provided by those claimed limitations over the prior art and even over the nonprior work of Aikins may be appreciated by a closer comparison between the present claimed invention and Rudy '717. The object of the Rudy '717 invention is to provide a "relaxation article."

Application No. 09/805,539
Amendment dated August 8, 2003
Responsive to Office Action dated May 28, 2003

Consequently, the sleeve apertures can be and specifically are circular as shown in Rudy Figure 2 reference nos. 121 and 111. The sleeves are designed not to impede circulation should the person fall asleep. A cuff "may be" or may not be present. The relaxation article is adapted to cover at least the upper body portions of the user reclining in a bed, easy chair, or the like.

Instead of a relaxation article, the object of the present invention is for significantly different and more active wear by an elderly, semi-immobile user. The present claimed limitations including the oblong sleeve apertures and the oblique orientation are structural differences that accomplish the different objects of the present invention. The oblong sleeves and oblique orientation accommodates a wider range of arm movement. That benefit is especially important for elderly users being moved into and out of a wheelchair as well as activities in a wheelchair. The oblong sleeve apertures and oblique orientation enables a "one size fits all" to handle all sizes and shapes of people. The claim features also provide an easier way of putting on and taking off the invention for wheelchair and hospital-bound people. The oblong sleeve apertures and oblique orientation provide thermal control by allowing full or half sleeve use depending on the warmth desired. The oblong sleeve apertures and oblique orientation also improve mobility for the user by expanding the range of activities permitted under a blanket without the problem of binding and pulling.

Thus, the Rudy relaxation article is designed for use in a passive mode, while the present invention is designed for use in an active mode. The circular sleeve apertures taught in Rudy are suitable in a passive mode, but are unsuitable to accomplish active mode objects of the present invention. Those claim limitations are

Application No. 09/805,539
Amendment dated August 8, 2003
Responsive to Office Action dated May 28, 2003

patentably significant differences for facilitating the activity of hospital patients and nursing home residents. The users can accomplish a wider variety of actions without being impaired by the blanket.

Claim 13 is rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 3,919,721 to Earhart in view of U.S. Patent 5,245,717 to Rudy, and in further view of U.S. Patent 777,825 to Wilkes. Applicant respectfully traverses. The explicit claim 13 limitation requires sleeve apertures to have an oblong shape for facilitating improved freedom of arm movement within the sleeve. The same arguments apply with similar force here and show the patentability of claim 13.

Earhart '721, Rudy '717, and Wilkes '825, considered individually or together in combination, fail to suggest or teach the claim 5 limitation of a sleeve aperture which has "an oblong shape for facilitating improved freedom of arm movement within said sleeve." Nor do the above-cited references show the limitation of a pocket panel coinciding with the bottom edge of said blanket.

Application No. 09/805,539
Amendment dated August 8, 2003
Responsive to Office Action dated May 28, 2003

Conclusion

On the basis of the foregoing amendments, the marks and papers of records, Applicant respectfully submits that the remaining claims 5, 6, 7, 9, 11, and 13 are now in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
Diane L. Deering
Bradley E. Deering
By their attorneys

MOORE & HANSEN
2900 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
(612) 332-8200

Date: Aug. 8, 2003

By John D. Kramm
John D. Kramm, Registration No. 36,851

Official

FAX RECEIVED

AUG 11 2003

GROUP 3600